

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **WESTERN DISTRICT OF WASHINGTON**
7 **AT TACOMA**

8 **RICKY P. PATU,**

9 **Plaintiff,**

10 v.

11 **DEPARTMENT OF CORRECTIONS,**

12 **Defendant.**

13 **CASE NO. C17-5940 BHS**

14 **ORDER ADOPTING REPORT**
15 **AND RECOMMENDATION**

16 This matter comes before the Court on the Report and Recommendation (“R&R”)
17 of the Honorable Theresa L. Fricke, United States Magistrate Judge (Dkt. 7), and
18 Plaintiff’s objections to the R&R (Dkt. 8).

19 On November 8, 2017, Plaintiff filed his proposed complaint, which was followed
20 shortly by his motion to proceed *in forma pauperis*. Dkts. 1, 4, 5. On December 27, 2017,
21 the R&R was issued wherein it is recommended that Plaintiff’s motion be denied
22 pursuant to 28 U.S.C. § 1915(g) in light of his pre-existing “three strikes.” Dkt. 7. On
January 5, 2017, Plaintiff filed his objections. Dkt. 8.

23 The district judge must determine de novo any part of the magistrate judge’s
24 disposition that has been properly objected to. The district judge may accept, reject, or

1 modify the recommended disposition; receive further evidence; or return the matter to the
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 Plaintiff attempts to raise three objections. First, he argues that the envelope
4 containing the R&R (and other legal mail) was improperly opened by the prison staff
5 where he is incarcerated before he received it. Second, he argues that the prison staff is
6 “obscur[ing] [his] ability to relinquish [his] IFP payments” that preceded this case. Third,
7 Plaintiff complains that prison staff is preventing him from ascertaining the amount he is
8 required to pay in restitution. None of these objections assign any error to the R&R’s
9 conclusion that Plaintiff’s *in forma pauperis* request is barred by his prior three “strikes.”
10 Because Plaintiff has failed to establish that he is under imminent danger of serious
11 physical injury, his request to proceed *in forma pauperis* must be denied. 28 U.S.C. §
12 1915(g).

13 Having considered the R&R, Plaintiff’s objections, and the remaining record, the
14 Court orders that the R&R is **ADOPTED**. Plaintiff is ordered to pay the applicable \$400
15 filing fee if he wishes to proceed with this action. If Plaintiff fails to pay the applicable
16 filing fee by March 14, 2017, without further order from the Court, the Clerk shall enter
17 JUDGMENT dismissing the case without prejudice.

18 Dated this 15th day of February, 2018.

19
20 
21 BENJAMIN H. SETTLE
22 United States District Judge